

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2026 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SITABEN W/O MAFATLAL

MAGHABHAI PARMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/11/1999

ORAL JUDGEMENT

1. The petitioner who has been detained under the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act' for short] by virtue of an order passed by the Commissioner of Police, Ahmedabad city, Ahmedabad, dated 24th February 1999, on the same day.

2. The grounds of detention indicate that the detaining authority considered two offences registered against the petitioner under the Bombay Prohibition Act. The authority also considered the statements of two witnesses in respect of incidents dated 30/1/99 and 5/2/99 regarding unregistered offences. The detaining authority came to a subjective satisfaction that the petitioner is a bootlegger involved in the activities which has resulted into disruption of public order and therefore, the detention of the petitioner under the PASA Act is the only remedy available for immediately preventing him from pursuing his illegal and antisocial activities.

3. The petitioner has approached this Court with this petition under Article 226 of the Constitution of India on various grounds. One of the grounds is that the statements of witnesses were recorded by the sponsoring authority on 24th February 1999. The statements were verified by the detaining authority on the same day i.e. on 24th February 1999 and the order of detention also came to be passed on that very day i.e. on 24th February 1999. Another ground that has been taken is that the petitioner was in custody when the order of detention came to be passed and the detaining authority has not considered the less drastic remedy in the nature of cancellation of bail.

4. Ms. Kachhawah, learned advocate for the petitioner has restricted her submission to above grounds only and urged to allow the petition.

5. Mr.H.H.Patel, learned AGP appearing for the respondents has opposed this petition. He submitted that factually it is true that the statements were recorded and verified on 24th February 1999 and the detention order is also passed on the same day. He tried to justify this action by stating that the authorities acted vigilantly and quickly and therefore, this cannot be considered as a ground for allowing the petition.

6. The petition however deserves to be allowed only on the ground of non-application of mind due to the reason that the statements of witnesses have been recorded on 24th February 1999, the same have been verified on the same day and the order of detention was passed on the same day. There was no time lag sufficient

enough for the detaining authority to consider the privilege u/s 9[2] of the PASA Act. In 1993[2] GLR 1659 in the case of Kalidas Chandubhai v/s State of Gujarat, it has been decided that there must be sufficient time for the detaining authority to satisfy itself about the genuineness and correctness of the incidents narrated by the witnesses and the fear expressed by the witnesses who have given statements in respect of unregistered offences. This being so, the order of detention is bad for want of application of mind for exercising powers u/s 9[2] of the PASA Act of claiming privilege which cannot be considered as genuine.

7. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad dated 24th February 1999 in respect of the petitioner Smt. Sitaben w/of Mafatlal Maghabhai Parmar, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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